

1 EDMUND G. BROWN JR.
Attorney General of the State of California
2 DANE R. GILLETTE
Chief Assistant Attorney General
3 GARY W. SCHONS
Senior Assistant Attorney General
4 KEVIN R. VIENNA
Deputy Attorney General
5 ANTHONY DA SILVA
Deputy Attorney General
6 State Bar No. 159330
110 West "A" Street, Suite 1100
7 San Diego, CA 92101
P.O. Box 85266
8 San Diego, CA 92186-5266
Telephone: (619) 645-2608
9 Fax: (619) 645-2271
Email: Anthony.Dasilva@doj.ca.gov
10 Attorneys for Respondent

11 IN THE UNITED STATES DISTRICT COURT
12 FOR THE SOUTHERN DISTRICT OF CALIFORNIA

13 **DAVID O'SHELL,**

Petitioner,

15 v.

16 **STEVEN MAYBERG, Warden,**

Respondent.

Civil No. 08-0436 J (NLS)

**APPLICATION FOR THIRTY-DAY
ENLARGEMENT OF TIME TO
FILE MOTION TO DISMISS OR
ANSWER; DECLARATION OF
ANTHONY DA SILVA IN
SUPPORT THEREOF**

19
20 Respondent respectfully requests, under Federal Rule of Civil Procedure 6(b), that this
21 Court order a thirty-day enlargement of time to file either a Motion to Dismiss or an Answer to the
22 Petition for Writ of Habeas Corpus pursuant to 28 U.S.C. § 2254 filed by David O'Shell. This Court
23 ordered that Respondent file a Motion to Dismiss by June 12, 2008, or an Answer by June 27, 2008.
24 Respondent needs additional time to brief this case because this case was assigned to counsel while
25 he was on vacation and he needs additional time to familiarize himself with this case. Counsel for
26 respondent is also currently working on a previously assigned matter that is currently due on June
27 18, 2008.
28

1 Respondent respectfully requests that the time to file be extended for a thirty-day period,
2 until July 12, 2008, to file a Motion to Dismiss, or until July 27, 2008, to file an Answer, for good
3 cause as shown in the attached declaration.

4
5 Dated: June 12, 2008

6 Respectfully submitted,

7 EDMUND G. BROWN JR.
Attorney General of the State of California

8 DANE R. GILLETTE
Chief Assistant Attorney General

9 GARY W. SCHONS
Senior Assistant Attorney General

10 KEVIN R. VIENNA
Deputy Attorney General

11
12 s/Anthony Da Silva

13 ANTHONY DA SILVA
14 Deputy Attorney General
15 Attorneys for Respondent
16
17
18
19
20
21
22
23
24
25
26
27
28

DECLARATION OF ANTHONY DA SILVA

Anthony Da Silva declares under penalty of perjury:

I am the deputy attorney general assigned to prepare the Respondent's briefing in the matter of O'Shell v. Mayberg, Civil No. 08-0436 J (NLS).

I was out of the office and on vacation from May 9-30, 2008. Upon my return to the office on June 2, 2008, I learned that I had been assigned to represent the Respondent and prepare the briefing in this matter. I am aware that this Court has ordered that a Motion to Dismiss be filed no later than June 12, 2008, or an Answer be filed no later than June 27, 2008.

I am not familiar with the state court record or pleadings in O'Shell's case, as I was not the assigned attorney of his direct appeal. On June 10, 2008, I received a copy of the state court records that are necessary to properly respond to the allegations contained in O'Shell's Petition.

I am currently working on an answer to a federal habeas corpus petition in a previously assigned case, Lopez v. Jenkins, U.S.D.C. - Southern Civil No. 08cv0457-LAB (AJB), which is currently due on June 18, 2008.

Based on the foregoing, I respectfully ask the Court to grant a thirty-day extension of time for good cause shown such that a Motion to Dismiss is not due until July 12, 2008, and an Answer is not due until July 27, 2008.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct, on this day, June 11, 2008, at San Diego, California.

Respectfully submitted,

s/Anthony Da Silva
ANTHONY DA SILVA
Deputy Attorney General

AD:lh
SD2008801116
70127172.wpd

DECLARATION OF SERVICE BY U.S. MAIL

Case Name: **O'Shell v. Mayberg**

No.: **08CV0436 J (NLS)**

I declare:

I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar, at which member's direction this service is made. I am 18 years of age or older and not a party to this matter. I am familiar with the business practice at the Office of the Attorney General for collection and processing of correspondence for mailing with the United States Postal Service. In accordance with that practice, correspondence placed in the internal mail collection system at the Office of the Attorney General is deposited with the United States Postal Service that same day in the ordinary course of business.

On June 12, 2008, I served the attached **Application for Thirty-Day Enlargement of Time To File Motion To dismiss or Answer; Declaration of Anthony Da Silva in Support Thereof**, by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, in the internal mail collection system at the Office of the Attorney General at 110 West A Street, Suite 1100, P.O. Box 85266, San Diego, CA 92186-5266, addressed as follows:

David O'Shell
CO-000761-7
Coalinga State Prison
P.O. Box 5003
Coalinga, CA 93210
In Pro Per

I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on June 12, 2008, at San Diego, California.

L. Hernandez
Declarant


Signature